आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA Nos.661/Chny/2019, 202 & 203/Chny/2023
(निर्धारणवर्ष / Assessment Years: 2015-16, 2016-17 & 2017-2018)

Indian Overseas Bank, **763, Anna Salai,** **Chennai 600 002.**	**Vs.**	The Assistant Commissioner of Income Tax, LTU (2) Chennai.

आयकरअपील सं./ ITA Nos.914/Chny/2019, 253 and 254/Chny/2023
(निर्धारणवर्ष / Assessment Years: 2015-16, 2016-17&2017-2018)

The Assistant Commissioner of Income Tax, LTU (2) Chennai.	**Vs.**	**Indian Overseas Bank,** **763, Anna Salai,** **Chennai 600 002.** **[PAN: AAACI 1223J]**
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

Assessee by	**:**	Shri. C. Naresh, C.A.,
Department by	**:**	Shri. A. Sasikumar, IRS. CIT.

सुनवाई की तारीख/Date of Hearing	**:**	14.11.2024
घोषणा की तारीख /Date of Pronouncement	**:**	31.12.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

The captioned appeals being ITA Nos.661/Chny/2019, 202/Chny/2023 and 203/Chny/2023 has been filed by the assessee and ITA Nos.914/Chny/2019, 253/Chny/2023 and 254/Chny/2024 has been filed by the revenue for assessment

years 2015-16, 2016-2017 and 2017-2018 respectively against different impugned orders by CIT(A)/NFAC as per table below:

Appellate order u/s 250 by NFAC / CIT(A)-17 under challenge	Assessment Order u/s 143(3) of the Act	Asst. Year
31.01.2019 by CIT(A)-17, Chennai.	29.12.2017 by ACIT, LTU-2, Chennai.	2015-16
29.12.2022 by NFAC, Chennai.	31.12.2018 by ACIT, LTU-2, Chennai.	2016-17
29.12.2022 by NFAC, Chennai.	23.12.2019 by ACIT, LTU-2, Chennai.	2017-18

2. The assessee M/s Indian Overseas Bank is a Scheduled Bank and assessable as a company for the purpose of Income tax. The assessee filed its return of income for AY 2015-16 on 30.11.2015 declaring of Rs.41,13,,18,277/- u/s 115JB of the Act. This case was selected for scrutiny under CASS and notice u/s 143(2) of the Act dated 28.09.2016 was issued. The ld. AO made various additions while passing assessment order. Since tax payable under Normal Method is Rs.6485,40,31,723/- which is more that the tax payable under Book Profit u/s 115JB of Rs.3437,30,42,396/- hence, tax payable under Normal Method is adopted by the AO.

3. At the outset, the ld. counsel for the assessee filed charts and fairly stated that in captioned appeals issues raised in the respective grounds of appeal are covered

either in favor of assessee or revenue by the Co-ordinate Bench decision of the Tribunal and other order of the Tribunal or special bench of the Tribunal. The ld.DR did not controvert the factual assertions of the ld. counsel for the assessee. Facts in these cases are similar to the facts for AY 2014-15 hence need no elaboration.

3. **ITA No.661/Chny/2019 for AY 2015-16 (Assessee Appeal)**

(I) Deduction u/s 36(1)(vii):

The appellant had claimed a sum of rs.2178.62 crores towards bad debts written off. However, based on the explanation 2 to section 36(1)(vii) the AO allowed the deduction at Rs.305.00 crores after reducing the opening credit balance as computed by him of Rs.1873.62 crores.

On this issue, the ld. CIT(A) based on his order in ITA 103/CIT(A)V/2016-17 for the AY 2014-15, similarly directed the AO to verify the genuineness of the claim of the assessee that there is no opening balance in provisions for bad and doubtful debts u/s 36(1)(viia) and recompute the bad debts allowed u/s 36(1)(vii) of the Act. We find from the record that the ld. CIT(A) is right in remitting back the issue to AO for verification the genuineness of the claim of the assessee. Hence, this ground of appeal of assessee is dismissed.

(II) Disallowance of Rs.7,06,20,323/- under section 14A read with Rule 8D:

The assessee argued that the AO failed to appreciate that since exempt income were received from securities which were held as stock in trade therefore, Rule 8D read with section 14A(2)(3) could not have been invoked. The ld.CIT(A) relied upon the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment [402

ITR 640 SC] and held that the dominant intention will not be relevant for determining disallowance u/s14A hence upheld the disallowance.

We find from chart submitted, this ground has been partly decided in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

> *''21. On the issue of Disallowance u/s. 14A, the ld DR presented the case on the lines of grounds of appeal. Per contra, the ld AR relied on the orders of this tribunal in the assessee's own case in ITA No. 947/Chny/2018 dated 28.02.2019 , the relevant portion is extracted as under:*
>
> > *"14. The next ground raised by the Revenue is against the disallowance under section 14A. The Ld. DR submitted on the lines of grounds of appeal. However, the Ld AR submitted that this issue was decided in favour of the assessee by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd (402 ITR 640) and this Tribunal in ITA No.77/Mds/2014 vide order dated 03/04/2017 decided partly in the assessee's favour in its own case. The relevant portion of the order of this Tribunal dated 03.04.2017 is extracted as under:-*
> >
> > > *8. The second ground is with regard to disallowance u/s.14Ar.w.Rules 8D of the Income Tax Rules, 1962.*
> > >
> > > *9. At the outset, the Id.A.R submitted that this issue came for consideration before this Tribunal in assessee's own case in IT.A.No.2126/Mds/20 13(supra) wherein the Tribunal held that: 63. Counsel for the assessee submits that assessee bank is holding securities as stock-in-trade, when once securities are held as stock-in trade, no disallowance under section 14A is warranted. The counsel submits that co-ordinate Bench of this Tribunal decided similar issue for the assessment year 2009-10 in ITA No.1949/Mds/2012 dated 18.6.2014. Referring to the said order, counsel submits that In principle, the Tribunal decided the issue in favour of the assessee holding that provisions of section 14A have no application when the securities are held as stock-in-trade. However, the Tribunal remitted the matter to the file of the Assessing Officer to ascertain whether securities are held as stock-in trade.*
> > >
> > > *64. Departmental Representative places reliance on the orders of lower authorities in invoking provisions of section 14A read with Rule 8D for the purpose of disallowing expenditure attributable for earning dividend income.*
> > >
> > > *65. We have perused the order of co-ordinate Bench of this Tribunal for the assessment year 2009-10, wherein the*

Tribunal held that authorities below have wrongly invoked section 14A in case of investments held as stock-in-trade. While holding so the Tribunal observed as under:'15. We have considered the rival contentions, perused the relevant findings and the judicial precedents undisputedly, the assesse had earned income of 21 crores from investments made in mutual funds and equities. Its stand adopted throughout has been to have held the investments as 'stock-in- trade'. There is no finding on this issue forthcoming either from the Assessing Officer or the CIT(A). We have also perused the 'guard' fife pertaining to l.T.A.No. 1815/Mds/2011 decided on 2.4.2013(supra). It is evident there from that the very disallowance stands upheld by a co-ordinate bench. Its plea challenging applicability of section 14A in case of investment held as 'stock-in trade' appears to have neither been raised nor adjudicated. So, we treat it as a fresh plea not covered by the earlier order. Thus, the new issue that arises for our consideration is as to whether a disallowance u/s 14A can be made even in a case when the investments giving rise to an 'exempt' income are held as 'stock-in trade' or not. Proceeding on the same, we find that the case law quoted by the assessee (supra) squarely supports its plea. The Revenue has brought to our notice a recent Third Member decision in case of D.H. Securities P. Ltd vs DCIT (2014] 31 (Trib) 381. This decision follows the judgment of the hon'ble Bombay high court (which is also the concerned jurisdictional high court) in case of Godrej & Boyce Manufacturing Co. Ltd vs A CIT, 328 ITR 81 and that of hon'ble Calcutta high court in Dhanuka & Sons vs CIT, 339 ITR 319. Not only this, the hon'ble Third Member also refers to the case law CC! Ltd.(supra) and expresses a view that the aforesaid decisions of other hon'ble high courts were not brought to the notice of the Karnataka high court. In these circumstances, the picture that emerges is that various high courts have expressed divergent opinions on this legal issue. That being the case, we apply the decision of CIT vs Vegetable Products Ltd 88 ITR 192 and in the view favourable to the assessee is followed. So, in principle, we hold that the authorities below have wrongly invoked section 14A in case of investments held as 'stock-in trade' wherein the 'exempt' income by way of dividends is only incidental. It is also made clear that since there is no verification of the factual position of investments held as 'stock-in-trade', we accept the assessee's contentions in principle only and remit the issue back to the Assessing Officer to determine the true factual position. The assessee's alternative plea carries only an academic significance. The relevant ground is accepted for 'statistical purposes." 66. Since the facts and circumstances are identical, following the

> *said decision of this Tribunal, we allow the ground raised by the assessee." 10. On the other hand, the ld.D.R relied on the orders of the lower authorities in invoking the provisions of the section 14A r.w.Rule 8D He further submitted for assessment year 2008-09, the same issue was decided against the assessee. 11. We have heard both the parties and perused the material on record. We have gone through the order of the assessment order. There is no finding in the assessment order regarding treatment of exempted income yielding assets as stock-in-trade. Hence, in our opinion, if it is treated as stock-in-trade by the assessee, then the claim of assessee is to be allowed in terms of Order of Tribunal in ITA No.2126/Mds./2013 (supra). Accordingly, this issue is remitted to the file of AO for fresh consideration. This ground is allowed for statistical purposes.*
>
> *In view of the above reasoning of this Tribunal, following it , we remit this issue back to the file of AO for fresh consideration. This ground is allowed for statistical purposes.*
>
> *" 22. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment year, respectfully following it, we remit this issue back to the file of the AO for fresh consideration. This ground is treated as allowed for statistical purposes.*

Respectfully following the co-ordinate bench order referred supra, we remit this issue back to the file of the ld. Assessing Officer for fresh consideration. Accordingly, this ground of assessee is partly allowed.

(III) Contribution of staff welfare fund:

The AO disallowed contribution of Rs.18,00,00,000/- made by the bank to Staff Welfare Fund stating that the fund is not recognized u/s 11 of the Act. However, the assessee contended that the payment was consequent to a contractual obligation and that recognition of the fund is not the prescribed criteria.

We find from the chart submitted, this ground has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''9. On the issue of Disallowance of contribution to staff welfare fund, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for assessment year 2013-14 , the relevant portion is extracted as under: "

8. The next ground raised by the assessee is with Regard to disallowance of contribution to staff welfare fund. The Ld. AR submitted that this issue was decided against the assessee by this Tribunal in its own case for the assessment year 2011-12 in ITA No.77/Mds/2014.

8.1 On hearing both sides, we find that this Tribunal vide order dated 03.04.2017 in ITA No.77/Mds/2014 for the assessment year 2011-12 has decided this issue against the assessee. The relevant portion of the order of this Tribunal, supra, is extracted as under:-

"12. The third ground is with regard to disallowance of contribution of staff welfare fund.

13. At the outset, the Ld. AR. submitted that this issue came for consideration before this Tribunal in assessee's own case in ITA No.2126/Mds/2013(supra).

14. We have heard both the parties and perused the material on record. As rightly pointed out by the Ld. AR this issue was decided against the assessee by the Co-ordinate Bench of Chennai Tribunal in assessee's own case for assessment year 2010-11 cited supra, wherein Tribunal held that:

"67. The next issue in the appeal of the assessee is that Commissioner of Income Tax (Appeals) erred in not allowing deduction in respect of contribution to staff welfare fund overlooking the mandatory requirement of payment as an employer.

68. At the time of hearing, counsel for the assessee submits that this issue has been decided against the assessee by the co-ordinate Bench for the assessment year 2008-09 in ITA No.1815/Mds/2011 dated 2.4.2013 in para 14 of the order. Respectfully following the said order of this Tribunal, we dismiss the ground of assessee on this issue." 14.1 Respectfully following the above decision of Tribunal in assessee's own case for assessment year 2010-11, we reject this ground raised by the assessee."

In view of the above, respectfully following the above order of this Tribunal, we reject the corresponding grounds of appeal of the assessee."

10. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it, we reject the corresponding grounds of the assessee.

Respectfully following the co-ordinate bench order referred supra we also decide this ground against the assessee. Accordingly, this ground of assessee is dismissed.

(IV) Recovery in respect of bad debts written off relating to rural branches of Rs.40,93,31,895/-:

The AO held that the appellant has not filed evidences to prove that this sum was already taxed in the earlier years. The appellant submitted that orders for the earlier years are available with the revenue wherein the bad debts written off of the rural branches have never been allowed by the revenue hence no need to file evidences.

As stated by the ld. Counsel for the assessee that this issue has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''11. On the issue of Recovery in respect of bad debts written off relating to rural branches viz ground nos 5.1 & 5.2, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for assessment year 2013-14 , the relevant portion is extracted as under:

"9. The next ground raised by the assessee is with regard to recovery of bad debts written off relating to rural branches. The Ld. AR submitted that this issue was decided in favour of the assessee by this Tribunal in ITA No35/Mds/2014vide order dated 03.4.2017.
9.1 Heard the rival submissions and perused the order of this Tribunal in ITA No.35/Mds/2017 dated 03.04.2017. The relevant portion of the order of this Tribunal, supra is extracted here under:-

27. The Fifth ground is with regard to addition towards bad debts recovered.

27.1 After hearing both the parties, the same issue came for consideration before this Tribunal in ITA No.1949/Mds./2012 vide order dated 18.06.2014 in assesse's own case wherein the Tribunal held that:

> *"52. Relevant facts qua this ground are that in Rs memo of income, the assessee is stated to have claimed deduction towards bad debts recovered. It explained before the Assessing Officer that this amount pertained to rural advances written off but not allowed in various preceding assessment years. It stressed the fact that when bad debts itself had been disallowed as deduction, recovery thereof could not have been taxed in the Impugned assessment year. The Assessing Officer held that the assessee had ordinarily claimed the above bad debts written off as expenditure. Further, he observed that it had a/so fifed appeals before the 'tribunal' and the issue was yet to attain finality. Accordingly, he disallowed the aforesaid amount.*
>
> *53. In lower appellate order, the CIT(A) holds that the recovery made in respect of bad debts could be taxed only if the bad debts themselves are allowed as a deduction by quoting section 41(4) in support. He disagrees with the Assessing Officer after expressing an opinion that when the bad debts written off had not been allowed as a deduction, the same cannot be taxed again. Therefore, the Revenue has raised the instant ground.*
>
> *54. We have heard both parties and gone through the orders of Assessing Officer and CIT(A). Even the Revenue does not dispute that the assessee had raised its claim of deduction of bad debts relating to the very sums in preceding assessment years. The Assessing Officer did not allow this relief in relevant previous year, when it has recovered the aforesaid debts, the Revenue is again seeking to tax the same. There is no cogent evidence before us to dispute this factual position Moreover, the CIT(A) has cited section 41(4) of the Act whilst granting relief .The Revenue has failed to point out any legal or factual error in CIT(A)'s findings Therefore, the same are affirmed. However, as a matter of caution, we observe that the assessee's claim of bad*

debts pertaining to those sums in preceding assessment years, if any, shall be deemed to have been dismissed. With these observations, the Revenue's ground is rejected." In view of the above Order of Tribunal, we dismiss the ground raised by the Revenue. Further, we make it clear that if it is allowed as bad debt in earlier years and recovered the same in the assessment year under consideration to be treated as income of assessee."

9.2 Respectfully following the above order of this Tribunal, we allow these grounds of the assessee subject to the above lines.

" 12. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it, we allow the corresponding grounds of the assessee.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also allow and decide this ground in favour of assessee. Accordingly, this ground of assessee is allowed.

(V) Depreciation on UPS at 80% instead of 60%:

The AO disallowed an amount of Rs.5,45,61,844/- as excess depreciation claimed on UPS on the contention that UPS is not an energy saving device and only a part of general plant and machinery.

Before us, fairly stated by the ld. Authorized Representative for the assessee that this issue has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''13. On the issue of Depreciation on UPS allowed at 60% instead of 80%, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for

assessment year 2013-14 , the relevant portion is extracted as under:

> *"10. The next ground raised by the assessee is with regard to depreciation on UPS allowed at 60% instead of 80% claimed by the assessee. The Ld. AR submitted that this issue was decided against the assesseeby this Tribunal in ITA No,77/Mds/2014 dated 3.4.2017 for the assessment year 2011-12.*
>
> *15. The fourth ground in this appeal is with regard to disallowing the claim of depreciation on UPS at 80% overlooking the fact that UPS is an energy saving device entailing for higher depreciation.*
>
> *16. At the time of hearing, the Id.A.R submitted that this issue came for consideration before this Tribunal in assessee's own case in I.T.A.No.2l26/Mds/2013(supra) and the Tribunal decided the issue against the assessee.*
>
> *17. We have heard both the parties and perused the material on record. As rightly pointed out by the Id.A.R, this issue was decided against the assessee by the Coordinate Bench of Chennai Tribunal in assesse's own case for assessment year 2010-11 cited supra, wherein Tribunal held that:*
>
> *"69. The next issue in the grounds of appeal of the assessee is that Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer disallowing the claim of depreciation on UPS at 80% overlooking the fact that UPS is an energy saving device entailing for higher depreciation.*
>
> *70. Counsel for the assessee submits that this issue has been decided against the assessee by the co-ordinate Bench for the assessment year 2009-10 in ITA No.1949/Mds/2012 dated 18.6.2014 at pages 10 & 11 in para 16 to 18 of the order.*

Respectfully following the said decision, we dismiss the grounds raised by the assessee on this issue." Respectfully following the above decision of Tribunal in assessee's own case for assessment year 2010-11, we reject this ground raised by the assessee."
In view of the above reasoning of this Tribunal, we reject this issue raised by the assessee."

14. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it, we reject the corresponding grounds of the assessee.

Respectfully following the co-ordinate bench order referred supra we also reject and decide this ground against the assessee. Accordingly, this ground of assessee is dismissed.

(VI) Restricting relief u/s 90 to the extent of foreign tax paid instead of tax charged on foreign Income which is included in Taxable Income:

The AO did not allow Double Income Tax Relief by way of exclusion of income of foreign branches from chargeability in India based on the Double Tax Avoidance Agreements entered into with respective countries.

From chart submitted by the ld. counsel, we find that this ground has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

> *''5. On the issue of Restriction of relief u/s. 90 to the extent of tax paid in foreign country instead of tax charged on foreign income which is included in total income, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for assessment year 2013-14, the relevant portion is extracted as under:*
>
> > *" 6.1 On hearing rival contentions, we find that this issue was decided against the assessee in its own case for the assessment year 2011-12 in ITA No.77/Mds/2014 vide order dated 03.04.2017. The relevant portion of the said order is extracted here under:-*
> >
> > *18. The last ground: in this appeal is with. regard to restricting the relief u/s.90 to the extent of tax paid in the foreign country.*
> >
> > *19. We have heard both the parties arid perused the material on record. In our opinion, the same issue came for consideration before the co-ordinate Bench of Chennai Tribunal in assesse's own case for assessment year 2010-11 cited supra, wherein Tribunal held that:-*
> >
> > > *'76. Counsel for the assessee submits that this issue has been decided against the assesee by the co-ordinate Bench for the assessment year 2009-10/n 174*

No.1949/Mds/2012 dated 18.6.2014 at pages 11 to 13 in paras 21 to 25 of the order,

77. We have perused the said order of this Tribunal and find that the issue has been decided against the assessee holding as under:

21. The seventh substantive ground challenges the ClTA's order restricting relief 90% of the tax paid in foreign countries

22. Factual backdrop qua this issue is that the assessee had raised a claim of double taxation relief in memo of income from its overseas branches in south Korea, Singapore, Thailand, Sri lanka and Hong Kong amounting to Rs.357,573/- Rs.21,32,37,338/-, Rs.I7,84,71,232, Rs.42,94,845/- and Rs.39,80,57,968/- respectively. Its thrust was upon various Double Taxation Avoidance Agreements DTAAs between India and the said countries except Hong Kong. The Assessing Officer had restricted this relief @ 16.5% Le the prevailing tax rate in Hongkong. Thereafter, he distinguished case law PVAL .Kulandaganchettiarvs CIT, 267 ITR 654 by observing that contrary to the facts of this case, Shri Chéttiar was fiscally domiciled in Malaysia and did not have any permanent establishment in India. On DTM with south Korea, the Assessing Officer was of the view that the terms contained therein did not give exclusive rate of tax to the concerned country and it had only provided for credit method of relief in double taxation. Accordingly, he declined to accept the assesse's claim.

23. Coming to the DTMs between India and Singapore, Thailand and Sri lanka, the Assessing Officer observed that they also recognized 'credit' method. He alleged the assessee not to have provided any difference in rates of tax in the above stated tax jurisdictions. Simultaneously, the Assessing Officer held that on furnishing details on assessee's part; the claim would be allowed in its favour. This resulted in disallowance/addition of 55, 65,44,48/-.

24. In lower appellate order, the CIT(A) has quoted a notification No. SO 2123(E) dated 28.8.2008 reported as 304 ITR(St)63, clarifying that in such a case involving a DTAA, an income has to be included in the total receipts and the necessary relief is to be granted by 'elimination' method or as per the terms of agreement seeking to avoid double taxation. He relies upon Finance Act, 2012 inserting explanation 3 to

section 90 making the notification retrospectively applicable. In this manner, the CIT(A) has directed the Assessing Officer to allow relief to the assessee as per the aforesaid notification.

25. We have heard both parties and gone through the relevant findings in the orders of Assessing Officer as well as the ClT(A). The parties are unanimous before us that this vary issue stands decided in the Revenue's favour by the 'tribunal^supra) in preceding assessment year. So, we also follow suitand reject the assessee's relevant grounds."

78 Respectfully following the said decision, we dismiss the ground raised by the assessee on this issue."

6.2 In view of the above findings of this Tribunal, we find no reason to interfere with the order of the Ld. CIT(A) on this issue and reject the grounds raised by the assessee."

6. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it , we find no reason to interfere with the order of the Ld. CIT(A) and hence reject the corresponding grounds of the assessee''.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also reject and decide this ground against the assessee. Accordingly, this ground of assessee is dismissed.

(VII) Depreciation on goodwill:

The AO disallowed depreciation on goodwill amounting to Rs.14,62,51,006/- by not taking into the decision of the Hon'ble Apex Court in Smifs Securities (348 ITR 302 SC). The ld. Counsel for the assessee from chart submitted that this ground has been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''7. On the issue of Depreciation on Goodwill, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for the assessment year 2013-14 , the relevant portion is extracted as under:

> 7. The next issue raised by the assessee is with regard to denial of depreciation on goodwill and the Ld. AR submitted that the Bank had during the year ended 31.01.2010 taken over assets &liabilities of Shree Suvama Sahakari Bank Ltd. The excess of Liabilities over Assets amounting to Rs.246,52,02,148/- has been treated as Goodwill, Depreciation on the said amount of Goodwill based on the WDV as on 01.04.2012 of Rs. 26,00,01,789/- has been claimed as deduction based on the decision of Supreme Court in the case of CIT vs Smift Securities Ltd (Civil Appeal No.5961 of 2012 (Arising out of SLP (c) No.35600 of 2009) dated 22.08.2012.The AO rejected this claim on the following reasons:
>
> > "As held by the assessee, assessee has taken over the specific asset and liabilities of M/s.Shree Swatna Sahakari Bank Ltd as existing as on 19.05.2009 as per the approval of RBI. Accordingly it resulted in excess of liabilities over assets absorbed on account of absorption scheme of RB1. The liabilities are balance sheet entries and same will be considered as and when incurred or paid as per the provisions of IT Act. Considering such liabilities as good will is neither justifiable nor based on any prudent accounting norms/methods of due diligence. Assessee's contention is devoid of merits and support of law.
> >
> > • As per the definition of the goodwill as made in the provisions of IT Act the same is read as under:-
> >
> > From the above it is clear that the assessee merely equated excess liabilities as attributable to goodwill on account of absorption scheme In fact it is opposite to the goodwill as defined in the IT Act as above and same do not qualify asset leave alone intangible asset as it is a liability. Hence assessee's contention to that liability. Hence assessee's contention to treat liability as an intangible asset if far stretched and contrary to the provisions of IT Act in latter and spirit.
> >
> > Assessee was requested to reconcile the good will as reflected in the books of the absorbed concern i.e. M/s Shree Swarna Sahakari Bank Ltd as appearing in their block of assets prior to its absorption. Hence assessees notional working of goodwill based on excess liabilities is not allowable as intangible asset qualified under good will.

• Any absorption scheme surplus of asset over liabilities has to be taken to reserves account of balance sheet. Subsequent to absorption as held by Hon'ble ITAT in the case of Spencer and Company Ltd of ITAT vide ITR No.440 of 2011. On similar analogy the surplus of liabilities over assets has to be taken to the balance sheet and same has no bearing on Profit and Loss account of assessee as it tantamount to skewed representation of profits on the year of absorption so as to avoid genuine taxes due to exchequer."

7.1 The Ld. AR invited our attention to the copy of Memorandum of Understanding for the proposed transferor dated 17.02.2009 and to the Schedule to the MoU and submitted that as per the MoU, liabilities to be taken over as on 31.12.2008 was valued at I1,078.13 crores and the assets to be taken over as on 31.12.2008 was valued at I870.58 crores and the resultant deficit of I207.55 crores was notionally treated as purchase consideration and argued that on this amount the assessee claimed depreciation. In support of his contention, he relied on the judgement of the Hon'ble Supreme Court in the case of Smifs Securities Ltd.(348 ITR 302) dated 22.08.2012.

7.2 Per contra, the Ld. DR invited our attention to para 12 of the Memorandum of Understanding, which is extracted as under:

> "12. Regarding Goodwill:-Since the business of Transferor Bank is under moratorium from 14/09/2006, the Transferor Bank does not enjoy any goodwill in commercial terms. Accordingly, no monetary consideration is provided for goodwill."

and submitted that as per the agreement, it is clear the transferor bank does not enjoy any goodwill in commercial terms and hence, there is no goodwill. The Ld. DR further invited our attention to the following portion of the judgement of the Hon'ble Supreme Court in the case of Smifs Securities Ltd.(348 ITR 302) :

> "Assessing Officer, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The Commissioner of Income Tax (Appeals) ["CIT(A)', for short] has come to the conclusion that the authorised representatives had filed

> copies of the Orders of the High Court ordering amalgamation of the above two Companies; that the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal ['ITAT, for short]. We see no reason to interfere with the factual finding"

and submitted that the decision of the Supreme Court is distinguishable on facts of the assessee's case. In the reported case, the assets and liabilities of M/s. YSN Shares and Securities Private Limited were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-Company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assessee-Company stood increased. This finding has also been upheld by Income Tax Appellate Tribunal. However, in the assessee's case, there is a deficit or loss of Rs.207.55 crores in the purchase consideration. Further, as per transfer agreement extracted, supra, itself it is clear that the transferor bank does not enjoy any goodwill in commercial terms and hence, there is no goodwill. When there is no goodwill and the assessee has also not paid any amount for goodwill it is not entitled to claim any goodwill, consequently no depreciation can be allowed. 7.3 We heard rival submissions and gone through relevant material. It is clear from the above that the assessee did not have any goodwill in commercial terms as it has acquired more liabilities than the assets. The Ld.DR's submission that when there is no goodwill as per the terms of the agreement as well as in reality. When the assessee has not paid any amount for the goodwill, it cannot claim existence of any goodwill. When there is no existence of goodwill, it is not entitled for any depreciation. Therefore, the assessee's corresponding grounds fail."

8. We heard the rival submissions. In view of the above findings of the Tribunal in the assessee's own case in the earlier assessment years,

respectfully following it, we reject the corresponding grounds of the assessee.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also reject and decide this ground against the assessee. Accordingly, this ground of assessee is dismissed.

(VIII) Depreciation on ATM:

The AO disallowed an amount of Rs.6,43,03,875/- as excess depreciation claimed on ATM on the contention that ATM is not a computer and is only a part of general plant and machinery. The ld. counsel pointed out that the issue of depreciation on ATM has been partly decided in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''15. On the issue of depreciation on ATM, the AR relied on the order of this tribunal in the assessee's own case in ITA No. 776/Chny/2018 dated 28.02.2019 for assessment year 2013-14, the relevant portion is extracted as under:

"11. The next ground raised by the assessee iswith regard to the depreciation on ATM. The Ld. AR submitted that this issue was decided in favour of the assessee by the Hon'ble Bombay High Court in the case of CIT Vs.Saraswat Infotech Ltd. in ITA(L) No.1243 of 2012. On hearing both sides, we find that the Hon'ble Bombay High Court in the above cited case has held as under:-

5) In second appeal, the Tribunal by its order dated 14.03.2012 held that UPS is an integral part of the computer system and regulate the flow of power to avoid any kind of damage to the computer network due to fluctuation in power supply which could lead to loss of valuable data. The Tribunal relied upon the decision of Delhi High Court dated 20/1/2011 in the matter of CIT Vs. Orient Ceramics & Industries Ltd in which UPS was held to be the part of the computer system

and depreciation at 60% was allowed. Similarly, so far as ATMs are concerned, the Tribunal on finding of fact concluded that ATM cannot function without the help of computer and would be a part of the computer used in the banking industry. Reliance was placed by the Tribunal upon the decision of the Delhi Bench of Tribunal in the matter of DCIT v. Global Trust Bank (ITA No.474/D/09)

wherein it has been held that ATM was a computer equipment and depreciation @ 60% was allowed. So far as the use of software is concerned, the Tribunal records a fact that the evidence of the use of the software on 31/3/2008 was produced before the Tribunal. Thus, the Tribunal held that depreciation @ 30% on software was rightly claimed."
Respectfully following the judgement of the Hon'ble High Court in the case of Saraswat Infotech Ltd., supra, we allow this ground of the assessee .

In the result, the assessee's appeal is partly allowed."

16. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following it, we allow the corresponding grounds of the assessee'.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years, respectfully following the co-ordinate bench order referred supra we also partly decide this ground in favour of assessee. Accordingly, this ground of assessee is partly allowed.

4. **ITA No.914/Chny/2019 for AY 2015-16 (Revenue Appeal)**

(I) Deduction u/s 36(1)(viia) based on advance outstanding and not on incremental advances:

The AO restricted the deduction to Rs.878.36 crores as against Rs.2172.14 cr claimed by the assessee, by wrongly considering the incremental advances of rural branches instead of the advances outstanding at the end of each month. Before us, the ld. Counsel for the assessee submitted that this issue has been

allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

> ''17. On the issue of deduction u/s. 36(1)(viia) based on advances outstanding and not on incremental advances, the ld DR presented the case on the lines of grounds of appeal . Per contra, the ld.AR relied on the orders of the Calcutta High Court in the case of Uttarbanga Kshetriya Gramin Bank in ITA No. 76/Kol/2016 and the assessee's own case in ITA No. 947/CHny/2018 dated 28.02.2019, the relevant portion is extracted as under:
>
> > "13. With regard to the claim that the deduction u/s 36(1)(viia) needs to be calculated based on the incremental advances for each month and not on the outstanding advance as on the last day of the relevant month, the Ld. DR submitted on the lines of grounds of appeal. Per contra, the Ld.AR submitted that this issue was decided by this Tribunal in favour of the assessee in ITA No.77/Mds/2014 vide order dated 03.04.2017. The relevant portion of the said order of this Tribunal is extracted as under:-
> >
> > > "Next we take up Revenue's appeal in ITA.No.35/Mds/2014
> > >
> > > The first issue in the appeal of the Revenue is that commissioner Tax (Appeals) erred in directing the Assessing Officer to the aggregate average advances outstanding at the end of each month and not the incremental advances granted during each month while computing deduction under section 36(i)(viia) of the Act.
> > >
> > > 22. We have heard the submissions of the Counsel and perused the material on record. In our opinion, this issue is squarely covered by the decision of the Co-ordinate Bench of Chennai Tribunal in assessee's own case in 1TA No.2O3l/Mds/2013 for assessment year2010-11 wherein held that
> > >
> > > > "80. At the time of hearing counsel for the assessee submits that the present issue has been decided in favour of the assessee by this Tribunal for the assessment year 2009-10 in ITA No. 1949/Mds/2012 dated 18.6.2014 at pages 24 to 26 in pares 55 to 59 of the order. He places reliance on the said order. Departmental Representative relies on the order of the Assessing Officer.
> > > >
> > > > 81. Similar issue has been raised by the Revenue in ITA No.2030/Mds/2013 for the assessment year 2007-08

and we have dealt with this issue in para 51 & 52 of this order. For the reasons mentioned therein and the decision holds good for the assessment year 2010-11, we reject the grounds raised by the Revenue on this issue."

22.1 In view of the above Order of Tribunal in the appeal of Revenue, we dismiss the ground raised by the Revenue Respectfully following the above decisions, the grounds of the Revenue are dismissed."

Respectfully following the above decisions, the grounds of the Revenue are dismissed."

18. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment years respectfully following it, we reject the corresponding grounds of the Revenue'.

However, the counsel for the assessee fairly conceded that Hon'ble jurisdictional High Court decided this ground partly in favour of assessee in the case of City Union Bank [TCA 961 of 2010] Para 10.2-12 which reads as under:

''10.2 Similarly, the second issue relating to deduction of Rs.8.53 crores u/s 36(1)(viia) with regard to the provision for bad and doubtful debts, is covered by the decision in Principal Commissioner of Income Tax, Jalpaiguri v. Uttarbanga Kshetriya Gramin Bank [(2018) 94 taxmann. Com 90 (Calcutta), in favour of the assessee and the relevant passage of the same is usefully extracted below:

"6. Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India reported in (1993) 199 ITR 43, on the following portion in the said judgment appearing in page 64 of the report.

"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."

7. Mr.Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed

by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clause (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amount of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful doubts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.

8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.

9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed. "

> *11. This court has no disagreement with the legal proposition laid down in the aforesaid decisions. However, in the present case, though there was no double deduction, as alleged by the appellant / Revenue, there was no clear vision about the advances made by the rural and non-rural branches of the bank and the quantum of deduction was not properly determined by the assessing officer based on the materials furnished by the respondent / assessee. In this context, the relevant paragraphs of the assessment order dated 31.03.2006 passed by the assessing officer are quoted below:*
>
> > *"5.3 When the assessee was asked to clarify whether the advances which were considered to be bad and doubtful in earlier years and for which the provision was made so as to claim deduction under section 36(1)(viia) of the Act, have been recovered subsequently, it was stated that as the provision claimed was not with reference to any particular debt due to the assessee but on an overall basis, it is not possible to certify that the bad debts claimed as trading loss for deduction u/s 36(1)(viia) was recovered or not. It was also stated that the assessee would not be able to give age-wise details of outstanding advances for the branches more so for the rural branches with reference to which the deduction was claimed, so as to determine whether any*

advance of earlier year for which provision was made is still outstanding.

5.4. In other words, the assessee is not in a position to give details of the advances with reference to which the deduction of Rs.14.99 crores was allowed as per Annexure 2 as deduction under section 36(1)(viia) towards unknown and anticipated trading loss by virtue of mere provision made on adhoc basis for bad and doubtful debts and to confirm that these advances were still outstanding as at the end of the previous year relevant to this accounting year."

"6.3.1. Therefore due to assessee's inability to relate the provision to any particular advance of a branch, it cannot be said whether it is a provision for rural advance or for non-rural advance so as to examine the monetary limit prescribed under section 36(1)(viia) for allowing deduction thereunder. Then such provision is only reserve for bad debts and not provision for bad and doubtful debts. Though the provisions of section 36(1)(viia) may be understood as a beneficial provision to the assessee company to claim deduction even in respect of reserve created by it to meet certain anticipated loss or contingency due to default of its debtors whom the assessee may not be able to easily identify at the end of the previous year, yet the computation machinery for determining the deduction admissible in the matter of write off bad and doubtful debts of rural or non-rural advance u/s 36(1)(v) read with the proviso thereunder and section 36(2)(v) of the Act would fail."

Thus, it is evident from the above extract that the quantum of deduction arrived at by the assessing officer was not based on the documents produced by the respondent / assessee. The CIT(A) as well as the Tribunal also, did not look into those aspect, while allowing the deduction claimed by the respondent / assessee. Therefore, this court is of the opinion that for that limited purpose, the matter has to be re-examined by the assessing officer and the same has also been agreed upon by the learned counsel appearing for both sides.

12. In such view of the matter, the order of the Tribunal, which is impugned herein, is set aside and the matter is remitted to the assessing officer for quantification of the deduction allowable to the respondent. The assessing officer shall complete the said exercise, after providing due opportunity to the respondent for submission of both oral and documentary evidence, if any, and pass appropriate orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment".

Therefore, respectfully following the Hon'ble jurisdictional High Court in the case of City Union Bank judgment referred supra we also remit this issue to AO for quantification of the deduction allowable. The AO is directed to proceed with the quantification of the deduction as per the judgment of the Hon'ble jurisdictional High Court delivered in the case of City Union Bank referred supra and shall complete the said exercise, after providing due opportunity to the respondent. Accordingly, this ground of revenue is allowed for statistical purposes.

(II) Provision for leave salary:

The AO disallowed the claim of assessee in respect of provision made for leave salary based on actuarial valuation amounting to Rs.101,00,00,000/-. Assessee contended that the AO failed to appreciate that the provisions of section 43B are not applicable for the above provision since it is neither a statutory liability nor a contractual liability. The ld. Counsel fairly conceded that this issue of provision for leave salary has already been decided against the assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

> *"23. On the issue of disallowance of provision for leave encashment, the ld DR presented the case on the lines of grounds of appeal. Per contra, the ld AR relied on the orders of this tribunal in the assessee's own case in ITA No. 947/Chny/2018, dated 28.02.2019, for assessment year 2013-14, the relevant portion is extracted as under:*
>
> > *"15. The next ground raised by the Revenue is against the disallowance of provision made for leave salary on actuarial valuation. With regard to the issue on leave salary, the AO held that it is only a provision and hence disallowed. Aggrieved, the assessee filed an appeal before the Ld. CIT(A) and the Ld. CIT(A) allowed the appeal based on this Tribunal's decision in assessee's case for assessment year 2010-11 in ITA No.2031/Mds/2013 dated 26.09.2014. Before*

us, the assessee submitted that the provision for leave salary cannot be disallowed u/s. 43B for the reason that leave provision is a contractual liability and therefore, it cannot be treated at par with tax, duty, cess or fee u/s. 43B. However, in the SLP (Civil) Nos. 22889/2008 dated 08.05.2009 in the case of CIT &ors. Vs M/s. Exide Industries Ltd & ANR, wherein, the Apex Court held that " pending hearing and final disposal of the Civil Appeal, Department is restrained from recovering penalty and interest which has accrued till date. It is made clear that as far as the outstanding interest demand as of date is concerned, it would be open to the Department to recover that amount in case Civil Appeal of the Department is allowed. We further make it clear that the assessee would, during the pendency of this Civil Appeal , pay tax as if section 43B(f) is on the statute Book but at the same it would be entitled to make a claim in its returns." In view of the above, subject to the conditions imposed by the Apex Court, supra, the addition made is sustained."

24. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment year, respectfully following it, the addition is sustained''.

In view of the above findings of the Tribunal in assessee's own case in the earlier assessment year, respectfully following it we also sustain the addition. Accordingly, this ground of Revenue is allowed.

(III) Depreciation on UPS at 60%:

This ground is elaborately discussed in para 3(V) supra. The ld. counsel submitted that this issue has already been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

`*''25. On the issue of allowance of depreciation on UPS at 60% instead of 15%, the ld. DR presented the case on the lines of grounds of appeal. Per contra, the ld AR relied on the orders of this tribunal in the assessee's own case in ITA No. 947/Chny/2018, dated 28.02.2019, for assessment year 2013-14, the relevant portion is extracted as under:*

> *"16. The next issue raised by the Revenue is with regard to depreciation on UPS at 60% instead of 15%. Similar issue was raised by the assessee in its appeal No.776/Chny/2018 herein above. For the same reasoning, we uphold the order of the Ld. CIT(A) and reject the ground raised by the Revenue."*
>
> *26. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment year, respectfully following it, we reject the corresponding grounds of the Revenue''.*

Respectfully following the co-ordinate bench order referred supra we also decide this ground in favour of assessee and against the Revenue. Accordingly, this ground of Revenue rejected.

(IV) Depreciation on assets taken over from Bank of Tamilnadu:

This ground has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

> *27. On the issue of depreciation on assets taken over by Bank of Tamilnadu, the Ld. CIT(A) directed to the AO to follow the directions given by the ITAT. In this regard the ld AR submitted that it needs no interference. Further, the Ld. AR relied on the orders of this tribunal in the assessee's own case in ITA No. 947/Chny/2018, dated 28.02.2019, for assessment year 2013-14, the relevant portion is extracted as under:*
>
> > *"17. The next issue raised by the Revenue is with regard to depreciation on assets taken over by Bank of Tamilnadu. We heard the rival submissions. Since the Ld.CIT(A) has directed the AO to follow the directions of this tribunal decision in the assessee's own case in ITA No.1815/Chy/2011 dated 02.04.2014 wherein, the ITAT had remitted the matter back to the AO to verify the scheme of take over and to determine whether the provisions of section 2(1B) were applicable, we do not find any error in the order of the Ld.CIT(A)."*
>
> *28. We heard the rival submissions. In view of the above findings of the Tribunal in assessee's own case in the earlier assessment year,*

respectfully following it, we do not find any error in the order of the Ld. CIT(A).

Respectfully following the co-ordinate bench order referred supra we also decide this ground in favour of assessee and against the Revenue. Accordingly, this ground of Revenue is dismissed.

(V) Applicability of Provisions of section 115JB:

This ground whether the requirement of sub-section (2) of 115JB is fulfilled in the present case of the assessees has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''29. On the issue of applicability of provisions of section 115JB, the Ld. AR relied on the order of the Calcutta ITAT in the case of UCI Bank (2015) 64 Taxmann.com 51 and Damodar Valley Corporation in ITA No. 438/Kol/2017, which is relied on by the Ld. CIT(A) in allowing the appeal in its favour.

30. We heard the rival submissions. Since, the Ld. CIT(A) has followed and applied the decision of Calcutta ITAT in the case of UCI Bank (2015) 64 Taxmann.com 51 and Damodar Valley Corporation in ITA No. 438/Kol/2017, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence, the corresponding grounds of the Revenue on this ground as well as the other grounds raised by the Revenue with regard to the various additions made in computing book profits are dismissed''.

It is also pointed out that this issue has been decided by the Special Bench of Tribunal Mumbai in the case of Union Bank of India Vs DCIT [ITA 424/Mum/2020] dated 06.09.2024. The Special Bench while deciding the issue held as under:

57. Before us, ld. Counsel has given various references under the Income Tax Act itself where the corresponding new bank and a banking company have been treated separate and independent from each other for which our reference was also drawn to Section 36(1)(viii) & 72A. Apart from

that, it is noticed that, Section 194A(1) of the Act which provides that if any specified person is responsible for paying to a resident any income by way of interest is obliged to deduct tax at source, however, Section 194A(3) provides that Section 194A(1) shall not apply if the payment has been made to certain entities. Clause (iii) of subsection (3) of section 194A, deals with such entities. The said clause reads as under:-

> *iii) to such income credited or paid to-*
>
> *(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or*
> *(b) any financial corporation established by or under a Central, State or Provincial Act, or*
> *(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or*
> *(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or*
> *(e) any company or co-operative society carrying on the business of insurance, or*
> *(f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:*
> *[Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]*

58. The aforesaid clause (f) provides that if Central Government notifies any such entity then TDS is not to be deducted. It is very relevant to note that at the time of Acquisition Act was enacted, Central Government had issued a Notification No. SO 710 dated 16/02/1970 [1970] [Reported in 75 ITR (Stat) 106] which reads as under:- Income-tax Act, 1961: Notification under sec. 194A(3)(iii)(f) Notification No. S. O. 710, dated February 16, 1970. (1) In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify with effect from the 19th July, 1969, the following banks for the purposes of the said sub-clause:-

> *1. Indian Overseas Bank, 151, Mount Road, Madras*
> *2. Indian Bank, Indian Chamber Building, Madras-1.*
> *3. Allahabad Bank, 14, India Exchange Place, Calcutta-1.*
> *4. Dena Bank, Devkaran Nanjee Building, 17, Horniman Circle, Fort, Bombay-1.*
> *5. Canara Bank, 112, Jayachamarajendra Road, Bangalore-1.*
> *6. Union Bank of India, 66/80, Apollo Street, Fort, Bombay-1.*
> *7. United Commercial Bank, 10, Brabourne Road, Calcutta-1.*
> *8. Bank of Baroda, 3, Walchand Hirachand Marg, Bombay-1.*

9. Punjab National Bank, Parliament Street, New Delhi-1.
10. Bank of India, 70/80 Mahatma Gandhi Road, Bombay-1.
11. Central Bank of India, Mahatma Gandhi Road, Bombay-1.
12. United Bank of India, 4, Narendra Chandra Datta Srani (Clive Ghat Street), Calcutta-1.
13. Bank of Maharashtra, 1177 Peth, Poona-2.
14. Syndicate Bank, Manipal, Mysore State, Mysore

59. Thus, the aforesaid notification read with provision of Section 194A(3), makes it clear that even Government of India considers the above entities separate and distinct from banking companies. Once under the Income Tax Act, Legislature itself has made a distinction for the aforesaid banks including the assessee are not covered as banking company, then, this further buttresses the point that these banks are separate and distinct from other banking companies.

60. Accordingly, the question referred to Special Bench is decided in favour of the assessee banks that clause (b) to sub section (2) of section 115JB of the Income-tax Act inserted by Finance Act, 2012 w.e.f. 1-4-2013, that is, from assessment year 2013-14 onwards, are not applicable to the banks constituted as 'corresponding new bank' in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and therefore, the provision of Section 115JB cannot be applied and consequently, the tax on book profits (MAT) are not applicable to such banks.

Hence, respectfully following the Special bench order referred supra we also decide this ground in favour of assessee and against the revenue. Accordingly, this ground of Revenue is dismissed.

(VI) Various additions under MAT:

This ground has been allowed in favour of assessee by the co-ordinate bench of the Tribunal in assessee's own case in ITA Nos.948 & 777 /Chny/2018 for AY 2014-15 which held as under:

''30. We heard the rival submissions. Since, the Ld. CIT(A) has followed and applied the decision of Calcutta ITAT in the case of UCI Bank (2015) 64 Taxmann.com 51 and Damodar Valley Corporation in ITA No. 438/Kol/2017, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence, the corresponding grounds of the Revenue on this ground as well as the other grounds raised by the Revenue with

regard to the various additions made in computing book profits are dismissed".

Respectfully following the co-ordinate bench order referred supra we also decide this ground in favour of assessee and against the Revenue. Accordingly, this ground of Revenue is dismissed.

5. ITA No.202/Chny/2023 for AY 2016-17 (Assessee Appeal) and ITA No.253/Chny/2023 for AY 2016-17 (Revenue Appeal):

The issues in these cross appeals for AY 2016-17 are recurring in similar nature to AY 2014-15 wherein the co-ordinate bench in assessee's own case decided some issues in favour of assessee and some in favour of revenue. We have also dealt with those issues in cross appeals being ITA Nos.661/Chny/2019 and 914/Chny/2019 for AY 2015-16 at para 3 and 4 supra and our orders will apply equally to this year also mutatis mutandis in terms of above.

6. ITA No.203/Chny/2023 for AY 2017-18 (Assessee Appeal) and ITA No.254/Chny/2023 for AY 2017-18 (Revenue Appeal):

The issues in these cross appeals for AY 2016-17 are recurring in nature to AY 2014-15 wherein the co-ordinate bench in assessee's own case decided some issues in favour of assessee and some in favour of revenue. We have also dealt with those issues in cross appeals being ITA Nos.661/Chny/2019 and 914/Chny/2019 for AY 2015-16 at paras 3 and 4 supra and ITA No.203/Chny/2023 and ITA No.254/Chny/2023 for AY 2017-18 at para 5 and our orders will apply equally to this year also mutatis mutandis in terms of above.

7. In result, appeals of the assessee and revenue are partly allowed in above terms.

Order pronounced in open court on 31st December, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated :31-12-2024
KV
आदेश की प्रतिलिपि अग्रेषित /Copy to :
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF